Filed 1/31/02

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

YSIDRO FLORES, Plaintiff and Appellant, v. MOBIL CORPORATION et al., Defendants and Respondents.	B142318 (Super. Ct. No. BC209393)

APPEAL from a judgment of the Superior Court of Los Angeles County, Susan Bryant-Deason, Judge. Affirmed.

Benedon & Serlin, Gerald M. Serlin and Douglas G. Benedon; Mancini & Associates, Marcus A. Mancini, and David A. Cohn for Plaintiff and Appellant.

Paul, Hastings, Janofsky & Walker, James A. Zapp and Michael J. McEnroe; and Craig J. Whitney for Defendants and Respondents.

I. INTRODUCTION

Ysidro Flores, plaintiff, appeals from a summary judgment in favor of his former employer, Mobil Oil Corporation and Mobil Business Resources Corporation, collectively referred to as defendant. Plaintiff alleged disability discrimination in violation of the Fair Employment and Housing Act (FEHA) (Gov. Code,[1] § 12900 et seq.) and wrongful termination in contravention of public policy. The trial court found no triable issue of material fact as to whether defendant reasonably accommodated plaintiff's disability. We agree. Accordingly, we affirm the judgment.

II. BACKGROUND[2]

The material facts are undisputed. Plaintiff was a union-represented pipe fitter in the maintenance department of defendant's Torrance oil refinery for 16 years, from 1980 to 1996. Pipe fitters were required to lift heavy materials and to repeatedly walk, climb, bend, and kneel. In August 1996, plaintiff injured his left knee while working. Plaintiff's knee injury precluded him from performing his pipe fitter duties, with or without accommodation.

---

[1] All further statutory references are to the Government Code except where otherwise noted.

[2] Plaintiff attempted to counter defendant's motion in part with the declarations of two former employees—Albert Peru and Richard Abeyta concerning the availability of other positions at the refinery. However, defendant's objections to those declarations were sustained in the trial court. The trial court judge also sustained defendant's objections to portions of plaintiff's deposition testimony. Plaintiff has not raised any issue on appeal as to the propriety of the trial court's evidentiary rulings. We will not consider the evidence as to which objections were made and sustained. (Code Civ. Proc., § 437c, subd. (c); *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65-66; *Artiglio v. Corning, Inc.* (1998) 18 Cal.4th 604, 612.)

Defendant's policy with respect to disability discrimination was as follows: "Mobil is firmly committed to providing a work environment free from discrimination . . . on the basis of . . . disability . . . . This commitment applies to all aspects of employment—including recruitment, hiring, training, compensation, job assignment, advancement, performance feedback, and separation. This commitment extends to making reasonable accommodations that enable qualified disabled individuals to perform the essential functions of their jobs."

Defendant's practice with respect to disabled employees was as follows: "Mobil's practice has been to attempt to provide, at its discretion, temporary light duty work to employees who are temporarily disabled and unable to perform their regular jobs. When provided, such temporary light duty work typically continues until the employee is able to return to his or her former position or his or her injury is declared permanent and stationary. Mobil does not permit an employee to continue to perform light duty work once the employee's injury is determined to be permanent and stationary. [¶] Once an employee's injury is determined to be permanent and stationary, Mobil's practice is to search for vacant positions within the same bargaining unit that the injury employee is able to perform with or without reasonable accommodation. If it appears that such a vacancy (or vacancies) exist, Mobil contacts the employee and initiates the interactive process necessary to determine what accommodations may be needed and whether the employee is willing to accept the vacant position(s). If Mobil determines that there is no such vacancy, the employee is invited to receive short-term disability benefits. Mobil provides short-term disability benefits for up to a year. Under Mobil's plan, a permanently disabled employee with at least ten years of service receives full pay for the first twelve weeks and half pay for the remaining forty weeks. Workers who are awarded short-term disability benefits remain Mobil employees and continue to receive full benefits. [¶] If Mobil is informed that an employee on short-term disability is capable of returning to work, the employee's short-term disability benefits end and the employee is returned to work. When an employee's short-term disability benefits are due to expire, Mobil's practice is to again assess whether there exist vacant positions within the

employee's bargaining unit that the injured employee can perform with or without reasonable accommodation. If no position exists, the employee may apply for long-term disability benefits (if the employee was participating in the long term disability plan) and his employment with Mobil is terminated. Long term disability benefits equal one half of an employee's base pay and may continue through retirement age."

At his deposition, human resources adviser Scott D. Brase explained defendant's practice in more detail: "What our practice would be is to take [the permanent and stationary determination] from the Medical Department and then I would go to just beginning an ever expanding search, start with their immediate supervisor in their own job and ask them if they could perform that job given these restrictions. If the answer were no, I would ask is there an accommodation of any nature that you think could be reasonably made that would allow them to perform this job with these restrictions. If the answer to that is no, then I search through initially their bargaining unit for vacant positions and then beyond the bargaining unit to other hourly represented jobs in two other bargaining units that we have and then finally into managerial positions if the person were qualified just to see if there were any open jobs that they were qualified for that would still tolerate the restrictions." Mr. Brase testified these practices were followed in plaintiff's case.

Plaintiff was temporarily disabled for 20 months, from August 1996 to April 1998. Defendant accommodated plaintiff's disability by *creating* light duty work for him in the refinery warehouse. Plaintiff engaged in clerical duties, work order processing, and computer operation. These were tasks plaintiff could perform while seated. The duties assigned to plaintiff were a portion of the work normally performed by warehouse employees.

Plaintiff took two to three weeks leave in February 1997 and six weeks leave in September 1997 for two separate knee surgeries. Between surgeries, and again following the second surgery, plaintiff missed three half-days of work a week to undergo physical therapy. During this time, defendant continued to classify plaintiff as a pipe fitter. Defendant paid plaintiff at the higher rate of pay for a pipe fitter rather than the lower

compensation paid to warehouse employees. Following his surgeries in 1997 and continuing to at least January 2000, plaintiff's injury prevented him from standing or walking for extended periods of time. In addition, plaintiff could not perform repetitive kneeling, squatting, crawling, or climbing.

Under the contract between defendant and plaintiff's union, bargaining unit vacancies were filled through job bidding. Pursuant to union contract, any employee within a unit could bid on a posted job opening. Open positions were to be awarded to the employee with the most seniority among those submitting bids for the position. In addition to seniority, it was necessary the employee bidding for the position have "the fitness and ability to efficiently perform the duties of the new job on his own responsibility under normal supervision."

In June 1997, while plaintiff was on temporary light duty, and following the first of his two surgeries, a warehouse position was posted for bid. Plaintiff believed the job was posted in December 1997 or January 1998. Defendant presented evidence the position was posted in June 1997. The position ultimately was awarded to an employee with less seniority than plaintiff. Because he believed that defendant's policy and practice prohibited employees on modified duty from bidding on jobs, plaintiff did not bid on the position. Plaintiff did, however, tell Maureen LaPoint, who "worked up front at the medical building," that he was interested in the warehouse employee job. Defendant disclaimed any policy or practice prohibiting employees on modified duty from bidding on vacancies. Defendant presented evidence that in 1996, two months after plaintiff was injured, and while he was on light duty, he had bid on another warehouse employee position. That vacant position was awarded to an employee with seniority over plaintiff.

There was conflicting evidence as to plaintiff's ability to meet the physical demands of the warehouse employee position. Defendant presented evidence the requirements for the position exceeded plaintiff's physical abilities given his disability. Plaintiff testified at his deposition that he had observed others performing the essential functions of the job and he knew he could fulfill the requirements. Plaintiff presented

further evidence the warehouse employee job requirements did not exceed his physical limitations. In spring 1998, defendant concluded plaintiff's condition was permanent and stationary. Dr. C.J. Gean, a physician employed by defendant stated, "I . . . required several permanent restrictions, including no repetitive bending, squatting, or crawling, no lifting, pulling or pushing of weights over fifty pounds, and walking only as tolerated."

Scott Brase, the Mobil human resources advisor, was notified that plaintiff's condition was permanent and stationary. Consistent with defendant's policy and practice, Mr. Brase described what happened then: "I then investigated whether there were any job vacancies in the bargaining unit at the Torrance refinery that could be performed by [plaintiff] with or without reasonable accommodations." Mr. Brase spoke with Steven Carrington regarding job openings in the maintenance department. Mr. Carrington was aware of plaintiff's work restrictions. Mr. Carrington believed that plaintiff could not work as a pipe fitter. Indeed, there was no dispute as to plaintiff's inability to resume his former job, with or without accommodation. Mr. Carrington told Mr. Brase that there were no vacancies in the maintenance department. Mr. Brase also spoke with Angie Hernandez who was responsible for filling job vacancies outside the Torrance refinery. Ms. Hernandez said there were no vacancies "in the pipeline organization." Mr. Brase, who was himself responsible for staffing positions in the refinery outside the maintenance department, knew of no vacancies. He spoke with an administrative assistant in the human resources department, Mary Ann Thomas, to verify that there were no positions available in the refinery. Mr. Brase also looked into openings with the electricians' local and the union representing pipeline workers. Ultimately, Mr. Brase concluded, "I determined that there were no . . . vacant positions [plaintiff could perform with or without accommodation] available in the bargaining unit or anywhere else in the refinery."

On April 27, 1998, Mr. Brase met with plaintiff and others. Also present was plaintiff's union representative. Mr. Brase explained: plaintiff's injury was permanent and stable; plaintiff was unable to resume his pipe fitter duties; and there were no other jobs available. Hence, Mr. Brase told the group that consistent with defendant's policy

and practice: plaintiff's temporary light duty work was ending; plaintiff would immediately begin receiving short term disability benefits; and plaintiff was eligible to undergo vocational rehabilitation and should apply for benefits as soon as possible.

Plaintiff remained on short-term disability for one year. He received 12 weeks of full salary and 40 weeks of half pay. Defendant also paid for plaintiff to attend a 26-week training course to become a microcomputer operations specialist. Plaintiff's short-term disability benefits expired on March 31, 1999. According to Mr. Brase, "At that time, there were no bargaining unit or other refinery jobs available for which [plaintiff] was qualified." Defendant presented evidence plaintiff was not qualified for a managerial or professional technical job; further, from 1996 through 1998, there were no clerical job openings at the Torrance facility and the refinery had downsized from 1200 to about 800 employees. When deposed, Mr. Brase testified as to job openings in defendant's facilities. Plaintiff was injured in August 1996. Plaintiff's employment was terminated in 1998. During that time frame: three positions became available; the two warehouse positions discussed above; and, in February 1998, a machinist job. However, plaintiff could not have performed the machinist job, even aside from his physical limitations, because he did not have the necessary technical skills.

Plaintiff's employment was terminated on April 1, 1999. He was advised of his right to apply for a family medical leave, but declined to do so. Plaintiff applied for and received long-term disability benefits.

III. DISCUSSION

A. Standard of Review

The parties' summary judgment burdens of production were described by the Supreme Court in *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851, as follows: "[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is

entitled to judgment as a matter of law. . . . A defendant bears the burden of persuasion that 'one or more elements of' the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto. ([Code Civ. Proc.,] § 437c, subd. (*o*)(2).) [¶] [T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact. . . . A prima facie showing is one that is sufficient to support the position of the party in question. [Citation.]" (Fns. omitted.) Once the burden shifts to the plaintiff opposing the summary judgment motion, the plaintiff "must 'set forth the specific facts showing that a triable issue of material fact exists as to th[e] cause of action . . . .' (Code Civ. Proc., § 437c, subd. (*o*)(2).)" (*Aguilar v. Atlantic Richfield Co., supra,* 25 Cal.4th at p. 849.) Further, the Supreme Court has held: "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id.* at p. 850, fn. omitted.)

We review the trial court's decision to grant summary judgment de novo. (*Johnson v. City of Loma Linda, supra,* 24 Cal.4th at pp. 65, 67-68; *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1188, disapproved on another point in *Aguilar v. Atlantic Richfield Co., supra,* 25 Cal.4th at p. 853, fn. 19.) The Supreme Court has held, "In ruling on the motion, the court must 'consider all of the evidence' and 'all' of the 'inferences' reasonably drawn therefrom ([Code Civ. Proc.,] § 437c, subd. (c)), and must view such evidence [citations] and such inferences [citations] in the light most favorable to the opposing party." (*Aguilar v. Atlantic Richfield Co., supra,* 25 Cal.4th at p. 843; *Crouse v. Brobeck, Phleger & Harrison* (1998) 67 Cal.App.4th 1509, 1520.) The trial court's stated reasons for granting summary judgment are not binding on us because we review its ruling not its rationale. (*Szadolci v. Hollywood Park Operating Co.* (1993) 14 Cal.App.4th 16, 19; *Barnett v. Delta Lines, Inc.* (1982) 137 Cal.App.3d 674, 682.)

B. Disability Discrimination and Reasonable Accommodation

It is unlawful for an employer to discriminate against a disabled employee. (§ 12940, subd. (a); see *City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143, 1156-1157.) An employer is not subject to legal liability nor prohibited from discharging a disabled worker when the employee "is unable to perform his or her essential duties even with *reasonable accommodations*." (§ 12940, subd. (a)(1), italics added; Cal. Code Regs., tit. 2, § 7293.8, subd. (b).) However, an employer must reasonably accommodate a disabled employee unless doing so would impose an "undue hardship." (Cal. Code Regs., tit. 2, § 7293.9; *Spitzer v. Good Guys, Inc.* (2000) 80 Cal.App.4th 1376, 1383; *Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 947.) The FEHA was amended effective January 1, 2001, to provide "It shall be an unlawful employment practice: [¶] . . . (n) For an employer . . . to fail to engage in a timely, good faith, interactive process with the employee . . . to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee . . . with a known physical or mental disability . . . ." (§ 12940, subd. (n); Stats. 2000, ch. 1049, § 7.5, No. 13 West's Cal. Legis. Service, pp. 5823-5826.) Plaintiff has not raised any issue with respect to the January 1, 2001, amendment.

"Reasonable accommodation" is defined by statute as follows: "'Reasonable accommodation' may include either of the following: [¶] (1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities. [¶] (2) Job restructuring, part-time or modified work schedules, *reassignment to a vacant position*, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities." (§ 12926, subd. (n), italics added.) California Code of Regulations, title 2, section 7293.9 is to the same effect. The Court of Appeal has held there is no hard and fast rule as to the meaning of "reasonable accommodation"; the term "reasonable

accommodation" is to be given a flexible interpretation. (*Prilliman v. United Air Lines, Inc.*, *supra,* 53 Cal.App.4th at p. 948; accord, *Sargent v. Litton Systems, Inc.* (N.D.Cal. 1994) 841 F.Supp. 956, 961.) The FEHA was modeled on federal law; therefore, our courts may look to federal decisions interpreting federal antidiscrimination statutes in applying state law. (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 812-813; *Cassista v. Community Foods, Inc.* (1993) 5 Cal.4th 1050, 1063.)

An employer has an affirmative obligation to reasonably accommodate a disabled employee absent undue hardship. (*Spitzer v. Good Guys, Inc.*, *supra,* 80 Cal.App.4th at p. 1383; *Prilliman v. United Air Lines, Inc.*, *supra,* 53 Cal.App.4th at pp. 946-951; Cal. Code Regs., tit. 2, § 7293.9.) The Court of Appeal has held, "[A]n employer who knows of the disability of an employee has an affirmative duty to make known to the employee other suitable job opportunities with the employer and to determine whether the employee is interested in, and qualified for, those positions, if the employer can do so without undue hardship or if the employer offers similar assistance or benefit to other disabled or nondisabled employees or has a policy of offering such assistance or benefit to any other employees. . . ." (*Prilliman v. United Air Lines, Inc.*, *supra,* 53 Cal.App.4th at pp. 950-951; *Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 225.) Similarly, the United States Supreme Court has stated: "Employers have an affirmative obligation to make a reasonable accommodation for a handicapped employee. Although they are not required to find another job for an employee who is not qualified for the job he or she was doing, they cannot deny an employee alternative employment opportunities reasonably available under the employer's existing policies. [Citations.]" (*School Bd. of Nassau County v. Arline* (1987) 480 U.S. 273, 289, fn. 19; *Bates v. Long Island R. Co.* (2nd Cir. 1993) 997 F.2d 1028, 1035.) As the foregoing cases suggest, the reasonable accommodation duty does not require an employer to create permanent light duty work or a new position for a disabled employee. (*McCullah v. Southern Cal. Gas Co.* (2000) 82 Cal.App.4th 495, 501; *Spitzer v. Good Guys, Inc.*, *supra,* 80 Cal.App.4th at p. 1389; accord, e.g., *Hoskins v. Oakland County Sheriff's Dept.* (6th Cir. 2000) 227 F.3d 719, 730; *Aldrich v. Boeing Co.* (10th Cir. 1998) 146 F.3d 1265, 1271, fn. 5.) Section 12926,

subdivision (n)(2), is consistent with this rule. It states in part that reasonable accommodation may include "reassignment to a *vacant* position." (§ 12926, subd. (n)(2), italics added; see *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 260-267; *Hanson v. Lucky Stores, Inc., supra,* 74 Cal.App.4th at pp. 225-226.)

When, as here, it is undisputed plaintiff cannot perform his essential duties, even with reasonable accommodation, an employer moving for summary judgment has the burden of establishing there were no vacant positions the disabled employee could have filled. (*Jensen v. Wells Fargo Bank, supra,* 85 Cal.App.4th at pp. 264-265; *Spitzer v. Good Guys, Inc., supra,* 80 Cal.App.4th at pp. 1389-1390; *Hanson v. Lucky Stores, Inc., supra,* 74 Cal.App.4th at p. 227; *Prilliman v. United Air Lines, Inc., supra,* 53 Cal.App.4th at pp. 951-952; see *County of Fresno v. Fair Employment & Housing Com.* (1991) 226 Cal.App.3d 1541, 1553; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2001) ¶ 10:268.7.) The plaintiff need not show that he or she requested an alternative job; stated differently, it is not a defense that the employee failed to request an alternative position. (*Prilliman v. United Air Lines, Inc., supra,* 53 Cal.App.4th at pp. 951-952; see *Bell v. Wells Fargo Bank* (1998) 62 Cal.App.4th 1382, 1385-1386.) Once the employer meets its burden, the plaintiff must present evidence sufficient to raise a triable issue as to the availability of other positions. (See *Hanson v. Lucky Stores, Inc., supra,* 74 Cal.App.4th at p. 229; Code Civ. Proc., § 437c, subd. (*o*)(2).) Whether the employer has met its duty to reasonably accommodate the disabled employee is ordinarily a question of fact. (*Prilliman v. United Air Lines, supra,* 53 Cal.App.4th at pp. 953-954; *Soldinger v. Northwest Airlines, Inc.* (1996) 51 Cal.App.4th 345, 370 [religious beliefs]; *Schmidt v. Safeway, Inc.* (D. Or. 1994) 864 F.Supp. 991, 997.) However, when the undisputed facts establish that the employer reasonably accommodated the disabled employee, summary judgment may be granted. (See, e.g., *Hanson v. Lucky Stores, Inc., supra,* 74 Cal.App.4th at pp. 225-229 & fn. 11.)

C. Application to the Present Case

It is conceded, for purposes of this appeal, that plaintiff had a physical disability within the meaning of the FEHA. Further, it is undisputed plaintiff was unable to perform the essential functions of a pipe fitter with or without accommodation. The question in this case is whether, as a matter of law, defendant reasonably accommodated plaintiff's disability.

Plaintiff contends defendant failed to meet its burden on summary judgment as to reasonable accommodation. We disagree. Defendant had a policy and practice of providing light duty work to temporarily disabled workers unable to perform their regular jobs and searching for vacant positions for permanently disabled employees who can no longer perform their responsibilities. Defendant followed those policies and practices in plaintiff's case. Once plaintiff's disability became permanent and stationary and he could no longer work as a pipe fitter, defendant sought but did not find any vacant jobs he could perform within or without the Torrance refinery. This was sufficient evidence to meet defendant's burden on summary judgment as to reasonable accommodation.

Plaintiff contends there was a triable issue of material fact whether he was capable of performing, without accommodations, the warehouse employee job. He argues he had satisfactorily performed in that position for a year; further, based on his observations of others, he was certain he could fulfill the job requirements. We find no triable issue. The only warehouse employee position at issue arose in June 1997. At that time: plaintiff was temporarily disabled; defendant had created a light duty position for him; plaintiff had undergone one surgery and was to undergo a second operation; plaintiff's condition was not permanent and stationary; and it was not finally determined plaintiff would be unable to return to work as a pipe fitter. Under these circumstances defendant was not obligated to offer the warehouse employee position to plaintiff.

Plaintiff contends defendant should have created a job for him or provided permanent light duty work as it purportedly had for two welders. We disagree. First, defendant had no such obligation, at least where it did not regularly offer such assistance

to disabled employees. (*McCullah v. Southern Cal. Gas Co., supra,* 82 Cal.App.4th at p. 501; *Spitzer v. Good Guys, Inc., supra,* 80 Cal.App.4th at p. 1389; accord, *Hoskins v. Oakland Sheriff's Dept., supra,* 227 F.3d at p. 730; *Aldrich v. Boeing Co., supra,* 146 F.3d at p. 1271, fn. 5.) Second, the evidence plaintiff cites as showing defendant had created permanent light duty positions for other employees did not suffice to raise a triable issue. Plaintiff testified at his deposition, "I'm sure that Mobil could have probably gave me a job [as a pipe fitter] in the weld shop as the two welders that are there permanent [*sic*]." This evidence would not allow a reasonable trier of fact to find, by a preponderance of the evidence, that defendant failed to reasonably accommodate plaintiff. There was no evidence of a vacant permanent position in the weld shop plaintiff could have performed. On the contrary, there was evidence that no pipe fitter was permanently assigned to the weld shop. In addition, plaintiff conceded that pipe fitters working in the weld shop worked on their feet, walking and standing, "[m]ost of the day." It was undisputed plaintiff's injury prevented him from working on his feet, walking and standing, most of the day.

One final note is in order concerning plaintiff's ability to perform a warehouse employee job. Mr. Brase agreed that plaintiff was qualified for a warehouse employee position. The problem with this contention, which was reiterated at oral argument, is that no such positions were available after plaintiff's condition had become permanent and stationery. It bears emphasis that defendants were under no obligation to create a position for plaintiff. (*McCullah v. Southern Cal. Gas Co., supra*, 82 Cal.App.4th at p. 501; *Spitzer v. Good Guys, Inc., supra,* 80 Cal.App.4th at p. 1389; accord, e.g., *Hoskins v. Oakland County Sheriff's Dept., supra*, 227 F.3d at p. 730; *Aldrich v. Boeing Co., supra*, 146 F.3d at p. 1271, fn. 5.)

D. Wrongful Termination

Disability discrimination in violation of the FEHA can form the basis of a common law wrongful discharge claim. (*City of Moorpark v. Superior Court, supra,* 18

Cal.4th at pp. 1160-1161; *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 894-895.) Absent a triable issue whether defendant failed to reasonably accommodate plaintiff's disability, however, there is no basis for plaintiff's claim of a public policy violation. (*Hobson v. Raychem Corp.* (1999) 73 Cal.App.4th 614, 632.)

IV. DISPOSITION

The judgment is affirmed. Defendants, Mobil Oil Corporation and Mobil Business Resources Corporation, are to recover their costs on appeal from plaintiff, Ysidro Flores.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P.J.

We concur:

GRIGNON, J.

MOSK, J.